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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/034,336 03/04/98 AGA

H AGA-6

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WASHINGTON DC 20004

HM12/0914

EXAMINER

MORAN, M

ART UNIT

PAPER NUMBER

1623

DATE MAILED:

09/14/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/034,336

Applicant(s)

Aga et al.

Examiner

Marjorie Moran

Group Art Unit

1623



☒ Responsive to communication(s) filed on Jun 30, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 5-30 is/are pending in the application.

Of the above, claim(s) 11-26 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 5-10 and 27-30 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restriction

Applicant's election with traverse of claims 5-10 and new claims 27-30 in Paper No. 5, filed 6/30/99 is acknowledged. The traversal is on the ground(s) that the composition of claim 11 is obtainable by the method of claim 5. This is not found persuasive because claim 11 does not depend from claim 5 and a composition and a method for inhibiting an activity are patentably separate inventions, as previously set forth in the office action of 3/31/99.

The requirement is still deemed proper and is therefore made FINAL.

This application contains claims 11-26 drawn to an invention nonelected with traverse in Paper No. 5, filed 6/30/99. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

An action on the merits of claims 5-10 and new claims 27-30 follows.

In view of the amendment filed 6/30/99 clarifying the claims, the rejection of claims 5-10 are made under 35 U.S.C. 103(a) over HERSH (B) in view of KUBOTA (AC), further in view of

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CARPENTER (E) is hereby withdrawn. Further in view of the amendment and arguments filed 6/30/99, the objection to claim 5 and all rejections made under 35 USC 112 are hereby withdrawn.

Specification

The abstract of the disclosure is again objected to because it is one runon sentence. Applicant refers to a new abstract and asks that a new abstract replace the original one as an amendment in the response filed 6/30/99; however, no new abstract was supplied. Appropriate correction is still required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

Claims 5-10 are again rejected, as previously set forth in the office action of 3/31/99, and new claims 27-30 are newly rejected under 35 U.S.C. 103(a) as being unpatentable over MARUTA *et al.* (A).

The examiner regrets the confusion caused by the recitation of KABUTA in the rejection. This was an error on the part of the examiner; all references to KABUTA in the body of the rejection should have been to MARUTA. The rejection of claims 1-5 was made over MARUTA only.

Applicant's arguments filed 6/30/99 have been fully considered but they are not persuasive. Response to those arguments is set forth below.

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Applicant claims a method of inhibiting the decrease of active-oxygen-eliminating activity by incorporating, in an aqueous system, an inhibitory agent, specifically trehalose, into a plant substance, as previously set forth. The term "active-oxygen-eliminating activity" is defined as antioxidant or radical scavenging activity, as set forth in the response filed 6/30/99. In claims 27, 29, and 30, applicant limits the amount of the inhibitory agent of trehalose to at least about 5% or at least about 20% by weight. In claim 28, applicant limits the inhibitory agent to further comprise pullulan or cyclodextran.

MARUTA makes obvious a method of stabilizing various antioxidants and enzymes by adding up to 75% trehalose to plant substances, as previously set forth. MARUTA further teaches that pullulan can be added to his compositions comprising plant substances with antioxidants and trehalose (col. 32, lines 44-60). In response to the argument that MARUTA does not specifically teach inhibition of a decrease in active-oxygen-eliminating activity, the examiner maintains that a method of stabilizing an antioxidant is a method of inhibiting the decrease of that activity. MARUTA specifically teaches that trehalose can be used to stabilize and protect the activity of vitamins such as riboflavin and ascorbic acid, known antioxidants found in food (col. 14, lines 15-29). Therefore, MARUTA, by teaching addition of trehalose to plant substances containing these substances (e.g. ascorbic acid is found in lemon and orange juice), teaches a method of stabilizing (inhibiting the decrease in activity) antioxidants in the plant substance. For these reasons, claims 27-30 are obvious and the rejection of claims 5-10 is maintained.

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Conclusion

Claims 5-10 are again rejected; claims 27-30 are newly rejected, and claims 11-26 are again withdrawn as being drawn to a nonelected invention. The abstract is again objected to.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

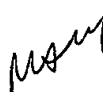
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Papers relating to this application may be submitted to Technology Center 1600 by facsimile transmission. The number of the fax machine for official papers in Technology Center

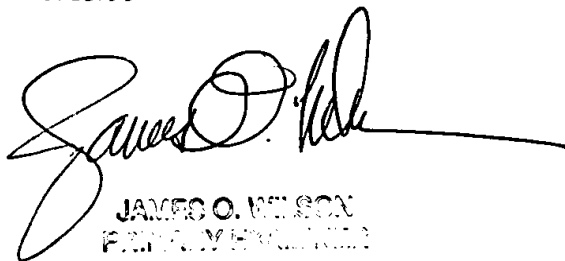
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1600 is (703) 308-4556. Any document submitted by facsimile transmission will be considered an official communication unless the cover sheet clearly indicates that it is an informal communication.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marjorie Moran whose telephone number is (703) 305-2363. The examiner can normally be reached on Monday through Friday from 7:30 a.m. to 4:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knode, can be reached at (703) 308-4311. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

 Marjorie A. Moran
Patent Examiner
Art Unit 1623

9/13/99


JAMES O. WILSON
PATENT EXAMINER
Group 1600